the appeal is essentially on a point of law as provided under s 28 of the Court of Judicature Act 1964.

The object and purpose of the Act is to regulate the form and contents of hire-purchase agreements and the rights and duties of parties to such agreements. By sub-s 1(2) of the Act, the provisions of the Act 'shall apply in respect only of hire-purchase agreements relating to the goods specified in the first schedule'. This certainly does not exclude the application of the provisions of the Act to hire-purchase agreements in respect of goods not specified in the first schedule if the parties to the agreement have agreed to be bound by the provisions of the Act. In other words, in respect of goods not specified in the first schedule to the Act, the parties are free to contract outside the provisions of the Act, or agree to be bound by those provisions.

In the appeal before me, the parties, in respect of the computer, had agreed in their hire-purchase agreement, to be bound by the provisions of the Act. It is in fact a hire-purchase agreement designed for use in respect of goods listed in the first schedule to the Act, but adopted and agreed to by the parties to be used in respect of the purchase of the computer. I do not think that because of this, the hire-purchase agreement is void. Indeed, such a hire-purchase agreement operates to the advantage of the hirer (the first respondent). From the record, it appears that there is no dispute as to whether the provisions of the Act had been infringed by the plaintiff. I therefore allow this appeal with costs, set aside the order of the magistrate, and enter judgment for the plaintiff/appellant for $1,022.50, and costs.

Appeal allowed.

Solicitors: *Nordin Hamid & Co.*

Report by *Wong Kim Fatt*

Canopee Investment Pte Ltd & Ors v Landmarks Holdings Bhd & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D2-22-79-87
VC GEORGE J
19 SEPTEMBER 1989

Civil Procedure — Taxation of costs — Getting-up item — Starting point in exercise of discretion — Whether subject matter of action involved novel or uncommon questions of law — Reference made to judgment and issues before the court — Subordinate Courts Rules 1980, O 48 r 12

This was a review of the amount that was allowed for getting-up by the deputy registrar. The plaintiffs had earlier obtained an interim ex parte injunction which the defendants had succeeded in discharging. The defendants asked for $15,000 for getting-up but the learned deputy registrar taxed it down to $1,500 and on review increased the amount to $2,000. He stated in his certificate that there were no novel questions involved requiring specialized knowledge. However, the judge who disposed of the application pointed out that the matter involved a point of law which counsel told him had not been decided in any reported case in Malaysia or abroad.

Held, allowing $12,500 for getting-up:

(1) A starting point in considering the exercise of discretion, particularly for the item 'getting-up', could be the fixed scale of costs set out in O 48 r 12 of the Subordinate Courts Rules 1980. The fixed cost in the scale is in proportion to the quantum of the subject matter of the action. A taxing officer of the High Court would be well advised to give a monetary value to the action if at all that is possible and when that has been done, to apply the Subordinate Courts Rules 1980 scale with adjustments using the policy of the grading system to reflect the quantum of the subject matter. For the purposes of taxation of costs, running down cases could be considered to be the simplest of cases and should attract for getting up the amount arrived at by applying the Subordinate Courts Rules 1980 scale. For the more complicated cases and those not as common, there should be a gradual scaling upwards of costs for getting-up.

(2) When it is not readily possible to give a monetary value to the subject matter of the action, the taxing officer should ask himself how much more or less getting-up has to be done in the case than would have been done in a running down action and use it as a guide to adjust the quantum.

(3) The judge who heard the application pointed out that the cause of action involved a point of law which counsel had told him had not been decided in any reported case in Malaysia or abroad. He had the benefit of the submissions of eminent counsel and from the judgment he was not prepared to say that the point was not novel. He was also grateful for the great assistance obtained by the extensive legal research conducted by the parties. Further, he had to consider a number of subordinate points including one side issue of obvious public importance which was the principles on which the court should be persuaded to hear a matter in camera. In the circumstances, the deputy registrar erred in holding that the case did not involve what could be considered novel or at worst uncommon questions of law.

Legislation referred to
Subordinate Courts Rules 1980 O 48 r 12

Santha Lourdes (Ms) for the plaintiffs.
CS Chan (Ms) for the defendants.

Cur Adv Vult

VC George J: This is a review of the amount that was allowed for getting-up by the registrar. A starting point in considering the exercise of discretion by a taxing officer particularly in respect of the item 'getting-up' could be the fixed scale of costs set out in O 48 r 12 of the Subordinate Courts Rules 1980. The fixed cost in the scale is in proportion to the quantum of the subject matter of the action. The scale is graded up to the maximum of the civil jurisdiction of a sessions court which is $100,000. The cost fixed for advocacy is $5,450 and for defending or suing $1,375 to give a total of $6,826 for a successful party in an action where the subject matter of the action is $100,000. The grading used after a basic amount at the lower end of the scale is an increase of the amount of costs for suing or defending by $25 per $1,000 and for advocacy by $100 per $1,000.

The taxing officer in the High Court would be well advised to give a monetary value to the action if at all that is possible and when that has been done to apply the Subordinate Courts Rules 1980 scale with adjustments using the said policy of the grading system to reflect the quantum of the subject matter where it is found to be over $100,000.

Now, for purposes of taxation of costs running down actions could be considered to be the simplest of cases. It should attract for getting-up about the amount arrived at by applying the Subordinate Courts Rules 1980 scale. For the more complicated cases and those not as common place as running down actions, there should be a gradual scaling upwards of the costs for getting-up from that starting point of what should be awarded in a running down action.

That is simple enough. The real problem is where it is not possible to readily give a monetary value to the subject matter of the action. Again, what ought to be given in a running down action could provide a good guide. The taxing officer should ask himself or herself how much more or less getting-up has to be done in the case than would have been done in a running down action and use the answer as a guide to adjust the quantum of the award.

In the instant case the defendants who had succeeded in preventing the grant of an injunction restraining the defendants from requisitioning an extraordinary meeting of a public company (in respect of which an interim ex parte injunction had earlier been obtained by the plaintiffs) had asked for $15,000 for getting-up. The learned deputy registrar initially taxed that down to $1,500 and on review increased the amount from $1,500 to $2,000. He took the view that that was sufficient for getting-up. In his certificate he said:

> I felt it was sufficient under the circumstances taking into account that there was no novel questions involved requiring specialized knowledge in this matter.

I am afraid that view runs somewhat contrary to the view taken by the learned judge who had disposed of the application. In his 28-page written judgment, inter alia, he points out at p 10 that the cause of action in the matter involves a point of law which counsel arguing the case had told him had not been decided in any reported case in Malaysia or abroad. It concerns the extent of the right of a pledgee of shares in a limited company to embroil himself in the affairs of that company. 'Untrammelled,' says the judge, 'the exercise of such a right can have a critical effect on the control of the pledgor over the affairs of the company. It may also have a devastating impact on the credibility of the pledgor and consequently on the value of his security.'

The learned trial judge was Shankar J who, before he was elevated to the Bench, was among the leaders of the Bar in the commercial courts and who had the benefit of the submissions of eminent counsel arguing the application. Looking at his written judgment, it is to be noticed that he was not prepared to say that the point was not novel. In any event, even if it may not be novel it can be said without fear of contradiction that the point is not common place.

In concluding his written judgment, the learned judge considered it relevant to record a debt of gratitude in respect of the 'great assistance' he had obtained from the extensive legal research that had been conducted by the teams of lawyers for both sides. This again more than suggests that the matter was not run of the mill.

Apart from the pivotal point and some ramifications thereof, the learned judge had to consider a number of subordinate points including the allegation (and the effect of making them) of fraud and coercion and the principles which guide a court in giving injunctions generally and particularly where mortgagees are involved.

One side issue of obvious public importance which the judge had to and did consider at some length — in almost ten pages of the written judgment — was the principles on which the court should be persuaded to hear a matter in camera — the plaintiffs had unsuccessfully applied to have the application tried in chambers rather than in open court.

In the face of all that, I think the learned deputy registrar erred in holding that the case did not involve what could be considered novel or at worst uncommon questions of law. In all the circumstances, the 'getting-up' in this matter should have been considered worth at least double what the getting-up in a $100,000 running down action is worth. I would have allowed $12,500 for getting-up.

Accordingly the learned deputy registrar's certificate is amended to the effect that item 19 of the bill of costs is allowed at $12,500. The cost of this review will be paid by the plaintiffs. I fix it at $300.

Order accordingly.

Solicitors: *Azman, Davidson & Co; Shearn Delamore & Co.*

Reported by *Yap Shao Sin*

Kumpulan Guthrie Sdn Bhd v Valaithan a/l Raman Nair & Ors

HIGH COURT (JOHORE BAHRU) — CIVIL APPEAL NO 16-21-88
LC VOHRAH J
2 SEPTEMBER 1989

Labour Law — Wrongful dismissal — Termination benefits — Whether new employment offered less favourable — Whether complainants' refusal constituted voluntary resignation — Employment Act 1955, ss 2, 13(2) & 60J — Employment (Termination and Lay-Off Benefits) Regulations 1980, reg 4(2)(a)

The appellant/defendant is the manager of Ladang Lambak Elaeis. The complainants/respondents were employed as rubber tappers on Ladang Lambak Elaeis. The respondents became redundant when the rubber trees in Ladang Lambak Elaeis were felled for replanting. Each of them was served with a notice dated 13 January 1987 from the appellant stating that 'you are now on a day-to-day basis a rubber tapper and you will be transferred as a general worker when the trees are felled in early February and March 1987'. Subsequently, on 28 February 1987, the appellant sent each of them a letter which offered three options — (a) a transfer to Ladang Sembrong as a rubber tapper; (b) a transfer to Ladang Tun Dr Ismail as a harvester; or (c) a transfer from the job of rubber tapper to that of general worker within Ladang Lambak Elaeis. The respondents refused to accept any of these three positions. They filed a claim against the 'pengurus' of Ladang Lambak Elaeis ('the defendant') for termination benefits under the Employment (Termination and Lay-Off Benefits) Regulations 1980 made pursuant to s 60J of the Employment Act 1955 ('the Act'). The appellant was ordered to pay a total sum of $14,687.37 as termination benefits to the respondents.

Held, dismissing the appeal:

(1) The appellant suffered neither injustice nor prejudice when the Penolong Pengarah Buroh gave her decision before or without giving consideration to a written submission on behalf of the appellant.

(2) The question as to who the actual employer was could not have affected the Penolong Pengarah Buroh's finding of fact that the new employment was less favourable than the previous one.

(3) The unilateral act of the appellant in converting the status of the respondents from that of permanent employees to that of daily-paid workers was clearly a case of subjecting the respondents to less favourable employment of a kind which constituted wilful breach by the appellant of a condition of the respondents' contract of service under s 13(2) of the Act entitling them per se to termination benefits.

Legislation referred to
Employment Act 1955 ss 2, 13(2), 60J
Employment (Termination and Lay-Off Benefits) Regulations 1980 reg 4(2)(a)

Yusof Khan for the appellant.
P Kuppusamy for the respondents.

Cur Adv Vult

LC Vohrah J: Kumpulan Guthrie Sendirian Bhd ('Kumpulan Guthrie') is the manager of Ladang Lambak Elaeis, an estate which is owned by Permodalan National Bhd. Valaithan a/l Raman Nair and the ten other respondents ('the complainants') were employed as rubber tappers on Ladang Lambak Elaeis and they filed a claim at the Labour Department in Kluang against the 'pengurus' of Ladang Lambak Elaeis ('the defendant') for termination benefits under the Employment (Termination and Lay-off Benefits) Regulations 1980 made pursuant to s 60J of the Employment Act 1955. After inquiring into the complaint under s 69 of the Act, the Penolong Pengarah Buroh ordered the defendant to pay a total sum of $14,687.37 as termination benefits to the complainants.

The undisputed facts insofar as they were relevant to the appeal were as follows. The complainants became redundant when the rubber trees in Ladang Lambak Elaeis were felled for replanting. Each of them was served with a notice dated 13 January 1987 bearing the Kumpulan Guthrie letterhead and logo (exh C3), signed by the 'assistant-in-charge, South' of Ladang Lambak Elaeis and stating that 'you are now on a day-to-day basis a rubber tapper and you will be transferred as a general worker when the trees are felled in early February and March 1987'. Subsequently on 28 February 1987 the defendant sent each of them a letter which offered three options — (a) a transfer to Ladang Sembrong as a rubber tapper; (b) a transfer to Ladang Tun Dr Ismail as a harvester; or (c) a transfer from the job of rubber tapper to that of general worker within Ladang Lambak Elaeis. Although Ladang Sembrong and Ladang Tun Dr Ismail belonged to Kumpulan Guthrie, the complainants refused to accept any of these three positions and it was argued on behalf of them that the new employment offered to them was less favourable and they were accordingly entitled to the payment of termination benefits under reg 4(2)(a). It was contended on behalf of the defendant that the refusal by the complainants to accept the new employment constituted voluntary resignation on their part and they were accordingly not entitled to the payment of termination benefits. The Penolong Pengarah Buroh who decided the dispute found, inter alia, that the defendant by virtue of s 2 of the Employment Act 1955 could be considered as the employer for the purposes of